



General Assembly

Amendment

January Session, 2017

LCO No. 6903



Offered by:

REP. ABERCROMBIE, 83rd Dist.

SEN. MARKLEY, 16th Dist.

SEN. MOORE, 22nd Dist.

REP. CASE, 63rd Dist.

To: House Bill No. **7190**

File No. 331

Cal. No. 247

"AN ACT CONCERNING A STUDY OF PROGRAMS ADMINISTERED BY THE DEPARTMENT OF SOCIAL SERVICES."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Subsection (d) of section 17b-99 of the general statutes is
4 repealed and the following is substituted in lieu thereof (*Effective July*
5 *1, 2017*):

6 (d) (1) The Commissioner of Social Services, or any entity with
7 which the commissioner contracts for the purpose of conducting an
8 audit of a service provider that participates as a provider of services in
9 a program operated or administered by the department pursuant to
10 this chapter or chapter 319t, 319v, 319y or 319ff, except a service
11 provider for which rates are established pursuant to section 17b-340,
12 shall conduct any such audit in accordance with the provisions of this

13 subsection. For purposes of this subsection, (A) "clerical error" means
14 an unintentional typographical, scrivener's or computer error, (B)
15 "extrapolation" means the determination of an unknown value by
16 projecting the results of the review of a sample to the universe from
17 which the sample was drawn, (C) "ninety-five per cent confidence
18 level" means there is a probability of at least ninety-five per cent that
19 the result is reliable, (D) "provider" means a person, public agency,
20 private agency or proprietary agency that is licensed, certified or
21 otherwise approved by the commissioner to supply services
22 authorized by the programs set forth in said chapters, (E) "stratified
23 sampling" means a method of sampling that involves the division of a
24 population into smaller groups known as strata based on shared
25 attributes, characteristics or similar paid claim amounts, (F)
26 "statistically valid sampling and extrapolation methodology" means a
27 methodology that is (i) validated by a statistician who has completed
28 graduate work in statistics and has significant experience developing
29 statistically valid samples and extrapolating the results of such
30 samples on behalf of government entities, (ii) provides for the
31 exclusion of highly unusual claims that are not representative of the
32 universe of paid claims, (iii) has a ninety-five per cent confidence level
33 or greater, and (iv) includes stratified sampling when applicable, and
34 (G) "universe" means a defined population of claims submitted by a
35 provider during a specific time period.

36 (2) Not less than thirty days prior to the commencement of any such
37 audit, the commissioner, or any entity with which the commissioner
38 contracts to conduct an audit of a participating provider, shall provide
39 written notification of the audit to such provider and the statistically
40 valid sampling and extrapolation methodology to be used in
41 conducting such audit, unless the commissioner, or any entity with
42 which the commissioner contracts to conduct an audit of a
43 participating provider makes a good faith determination that (A) the
44 health or safety of a recipient of services is at risk; or (B) the provider is
45 engaging in vendor fraud. At the commencement of the audit, the
46 commissioner, or any entity with which the commissioner contracts to

47 conduct an audit of a participating provider, shall disclose (i) the name
48 and contact information of the assigned auditor or auditors, (ii) the
49 audit location, including notice of whether such audit shall be
50 conducted on-site or through record submission, and (iii) the manner
51 by which information requested shall be submitted. No audit shall
52 include claims paid more than thirty-six months from the date claims
53 are selected for the audit. [A] The commissioner shall not apply a
54 policy, guideline, bulletin, manual or other such criteria to make
55 determinations in an audit unless the policy, guideline, bulletin,
56 manual or other such criteria, together with the effective date, was
57 promulgated and distributed to a provider prior to provision of a
58 service included in a claim being audited. The commissioner shall
59 accept a scanned copy of documentation supporting a claim [shall be
60 acceptable] when the original documentation is unavailable.

61 (3) Any clerical error discovered in a record or document produced
62 for any such audit shall not of itself constitute a wilful violation of
63 program rules unless proof of intent to commit fraud or otherwise
64 violate program rules is established. In determining which providers
65 shall be subject to audits, the Commissioner of Social Services may
66 give consideration to the history of a provider's compliance in addition
67 to other criteria used to select a provider for an audit.

68 (4) A finding of overpayment or underpayment to a provider in a
69 program operated or administered by the department pursuant to this
70 chapter or chapter 319t, 319v, 319y or 319ff, except a provider for
71 which rates are established pursuant to section 17b-340, shall not be
72 based on extrapolation unless the total net amount of extrapolated
73 overpayment calculated from a statistically valid sampling and
74 extrapolation methodology exceeds one and three-quarters per cent of
75 total claims paid to the provider for the audit period.

76 (5) A provider, in complying with the requirements of any such
77 audit, shall be allowed not less than thirty days to provide
78 documentation in connection with any discrepancy discovered and
79 brought to the attention of such provider in the course of any such

80 audit. Such documentation may include evidence that errors
81 concerning payment and billing resulted from a provider's transition
82 to a new payment or billing service or accounting system. The
83 commissioner shall not calculate an overpayment based on
84 extrapolation or attempt to recover such extrapolated overpayment
85 when the provider presents credible evidence that an error by the
86 commissioner, or any entity with which the commissioner contracts to
87 conduct an audit pursuant to this subsection, caused the overpayment,
88 provided the commissioner may recover the amount of the original
89 overpayment.

90 (6) The commissioner, or any entity with which the commissioner
91 contracts, for the purpose of conducting an audit of a provider of any
92 of the programs operated or administered by the department pursuant
93 to this chapter or chapter 319t, 319v, 319y or 319ff, except a service
94 provider for which rates are established pursuant to section 17b-340,
95 shall produce a preliminary written report concerning any audit
96 conducted pursuant to this subsection, and such preliminary report
97 shall be provided to the provider that was the subject of the audit not
98 later than sixty days after the conclusion of such audit.

99 (7) The commissioner, or any entity with which the commissioner
100 contracts, for the purpose of conducting an audit of a provider of any
101 of the programs operated or administered by the department pursuant
102 to this chapter or chapter 319t, 319v, 319y or 319ff, except a service
103 provider for which rates are established pursuant to section 17b-340,
104 shall, following the issuance of the preliminary report pursuant to
105 subdivision (6) of this subsection, hold an exit conference with any
106 provider that was the subject of any audit pursuant to this subsection
107 for the purpose of discussing the preliminary report. Such provider
108 may present evidence at such exit conference refuting findings in the
109 preliminary report.

110 (8) The commissioner, or any entity with which the commissioner
111 contracts, for the purpose of conducting an audit of a service provider,
112 shall produce a final written report concerning any audit conducted

113 pursuant to this subsection. Such final written report shall be provided
114 to the provider that was the subject of the audit not later than sixty
115 days after the date of the exit conference conducted pursuant to
116 subdivision (7) of this subsection, unless the commissioner, or any
117 entity with which the commissioner contracts for the purpose of
118 conducting an audit of a service provider, agrees to a later date or
119 there are other referrals or investigations pending concerning the
120 provider.

121 (9) Any provider aggrieved by a decision contained in a final
122 written report issued pursuant to subdivision (8) of this subsection
123 may, not later than thirty days after the receipt of the final report,
124 request, in writing, a contested case hearing in accordance with
125 chapter 54. Such request shall contain a detailed written description of
126 each specific item of aggrievement. The designee of the commissioner
127 who presides over the hearing shall be impartial and shall not be an
128 employee of the Department of Social Services Office of Quality
129 Assurance or an employee of an entity with which the commissioner
130 contracts for the purpose of conducting an audit of a service provider.
131 A provider shall be permitted to raise during such hearing that a
132 negative audit finding was due to a provider's compliance with a state
133 or federal law or regulation. Following review on all items of
134 aggrievement, the designee of the commissioner who presides over the
135 hearing shall issue a final decision not later than ninety days following
136 the close of evidence or the date on which final briefs are filed,
137 whichever occurs later. When a provider requests a hearing pursuant
138 to this subdivision, and the provider is contesting an overpayment
139 amount based on extrapolation, the Department of Social Services shall
140 not recoup the overpayment amount at issue until a final decision is
141 issued after the hearing.

142 (10) The provisions of this subsection shall not apply to any audit
143 conducted by the Medicaid Fraud Control Unit established within the
144 Office of the Chief State's Attorney.

145 (11) The commissioner shall provide free training to providers on

146 how to enter claims to avoid errors and shall post information on the
147 department's Internet web site concerning the auditing process and
148 methods to avoid clerical errors. Not later than February 1, 2015, the
149 commissioner shall establish and publish on the department's Internet
150 web site audit protocols to assist the Medicaid provider community in
151 developing programs to improve compliance with Medicaid
152 requirements under state and federal laws and regulations, provided
153 audit protocols may not be relied upon to create a substantive or
154 procedural right or benefit enforceable at law or in equity by any
155 person, including a corporation. The commissioner shall establish
156 audit protocols for specific providers or categories of service,
157 including, but not limited to: (A) Licensed home health agencies, (B)
158 drug and alcohol treatment centers, (C) durable medical equipment,
159 (D) hospital outpatient services, (E) physician and nursing services, (F)
160 dental services, (G) behavioral health services, (H) pharmaceutical
161 services, (I) emergency and nonemergency medical transportation
162 services, and (J) not later than January 1, 2016, homemaker companion
163 services. The commissioner shall ensure that the Department of Social
164 Services, or any entity with which the commissioner contracts to
165 conduct an audit pursuant to this subsection, has on staff or consults
166 with, as needed, a medical or dental professional who is experienced in
167 the treatment, billing and coding procedures used by the provider
168 being audited. There shall be a presumption in favor of the medical
169 judgment of the treating physician in determining medical necessity of
170 emergency treatment. Retroactive denials of such emergency treatment
171 by the department shall be made only by a physician trained in
172 emergency medicine.

173 Sec. 2. (NEW) (*Effective from passage*) (a) For purposes of this section,
174 "electronic visit verification" means the system required pursuant to
175 the 21st Century Cures Act, P.L. 114-255, that verifies the date, time and
176 site of a provider visit and services offered to a client in a home and
177 community-based service program administered by the Department of
178 Social Services and funded under Medicaid.

179 (b) Notwithstanding the provisions of section 17b-99 of the general

180 statutes, as amended by this act, the Commissioner of Social Services
 181 shall not withhold any payments, assess any penalties or extrapolate
 182 any overpayments due to errors related to implementation of a state-
 183 required electronic visit verification system by (1) a nonmedical home
 184 care provider from January 1, 2017, to May 1, 2017, inclusive, and (2) a
 185 medical home health care provider from April 1, 2017, to August 1,
 186 2017, inclusive. For purposes of this subsection, (A) a "nonmedical
 187 provider" means a Medicaid-enrolled provider of home care who is
 188 not licensed by the Department of Public Health, and (B) a "medical
 189 home health care provider" means a Medicaid-enrolled provider
 190 licensed by the Department of Public Health with Medicare
 191 certification to provide medically skilled home health care services
 192 under the supervision of a registered nurse.

193 (c) The Commissioner of Social Services shall submit a report, in
 194 accordance with the provisions of section 11-4a of the general statutes,
 195 to the joint standing committee of the General Assembly having
 196 cognizance of matters relating to human services on the
 197 implementation of any electronic visit verification system not later
 198 than July 1, 2018, and annually thereafter until 2022. Such report shall
 199 include (1) any problems experienced in implementation of the system,
 200 (2) recommendations to resolve identified problems, and (3) cost
 201 savings identified as a result of the system."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2017</i>	17b-99(d)
Sec. 2	<i>from passage</i>	New section